

Assembly Bill No. 459

CHAPTER 499

An act to amend Sections 17207 and 17405 of the Financial Code, relating to escrow agents.

[Approved by Governor October 4, 2001. Filed with
Secretary of State October 4, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 459, Nation. Escrow agents: fees.

Existing law provides for the collection by the Commissioner of Corporations of various fees relating to the practice of escrow agents. Under existing law, until January 1, 2002, among other fees and assessments, an annual license fee of \$2,000 is required to be paid to the commissioner by an escrow agent for each office or location for the commissioner's administration of the Escrow Law. After January 1, 2002, in place of this annual licensing fee, an escrow agent is required to pay the commissioner a pro rata share, as estimated by the commissioner, of all costs and expenses reasonably incurred in the administration of the Escrow Law.

This bill would extend from January 1, 2002, to January 1, 2006, the operation of the current fee and assessment procedure, but would authorize the imposition of an annual license fee of up to \$2,800 for an escrow agent. The bill, correspondingly, would delay until January 1, 2006, the requirement that an escrow agent pay the commissioner an annual charge equal to its pro rata share of the administrative costs and expenses of the commissioner under the Escrow Law.

Existing law provides for examination by the commissioner of the business, accounts, and records of every person performing as an escrow agent not less than every other calendar year.

This bill would require the commissioner to conduct an examination of each licensed escrow agent as often as deemed necessary and appropriate, but not less than once every 48 months. The bill would provide for an examination of a new licensee within 2 years of the issuance of the license. The bill would make other related changes.

The people of the State of California do enact as follows:

SECTION 1. Section 17207 of the Financial Code, as amended by Section 38 of Chapter 17 of the Statutes of 1997, is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars (\$625) for the first office or location and four hundred twenty-five dollars (\$425) for each additional office or location.

(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of the loss, theft, destruction, or surrender of certificate for replacement, two dollars (\$2).

(c) For investigation services in connection with each application, one hundred dollars (\$100), and for investigation services in connection with each additional office application, one hundred dollars (\$100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner for the support of this division for the ensuing year an annual license fee not to exceed two thousand eight hundred dollars (\$2,800) for each office or location.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount of the annual license fee levied against it, and that the payment of the invoice is payable by the escrow agent within 30 days after receipt of notification by the commissioner.

(3) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the annual license fee, of 10 percent of the fee for each month or part of a month that the payment is delayed or withheld.

(4) If an escrow agent fails to pay the amount due on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(5) If, after an order is made pursuant to paragraph (4), a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(f) Fifty dollars (\$50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.



(g) A fee not to exceed twenty-five dollars (\$25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

(h) (1) If costs and expenses associated with the enforcement of this division, including overhead, are or will be incurred by the commissioner during the year for which the annual license fee is levied, and that will or could result in the commissioner's incurring of costs and expenses, including overhead, in excess of the costs and expenses, including overhead, budgeted for expenditure for the year in which the annual license fee is levied, then the commissioner may levy a special assessment on each escrow agent for each office or location in an amount estimated to pay for the actual costs and expenses associated with the enforcement of this division, including overhead, in an amount not to exceed five hundred dollars (\$500) for each office or location. The commissioner shall notify each escrow agent by mail of the amount of the special assessment levied against it, and that payment of the special assessment is payable by the escrow agent within 30 days of receipt of notification by the commissioner. The funds received from the special assessment shall be deposited into the State Corporations Fund and shall be used only for the purposes for which the special assessment is made.

(2) If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the special assessment, of 10 percent of the special assessment for each month or part of a month that the payment is delayed or withheld. If an escrow agent fails to pay the special assessment on or before 30 days following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company. If an order is made under this subdivision, the provisions of paragraph (5) of subdivision (e) of this section shall apply.

(3) If the amount collected pursuant to this subdivision exceeds the actual costs and expenses, including overhead, incurred in the administration and enforcement of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(i) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 2. Section 17207 of the Financial Code, as added by Section 1.5 of Chapter 670 of the Statutes of 1996, is amended to read:

17207. The commissioner shall charge and collect the following fees and assessments:

(a) For filing an application for an escrow agent's license, six hundred twenty-five dollars (\$625) for the first office or location and four hundred twenty-five dollars (\$425) for each additional office or location.



(b) For filing an application for a duplicate of an escrow agent's license lost, stolen, or destroyed, or for replacement, upon a satisfactory showing of the loss, theft, destruction, or surrender of certificate for replacement, two dollars (\$2).

(c) For investigation services in connection with each application, one hundred dollars (\$100), and for investigation services in connection with each additional office application, one hundred dollars (\$100).

(d) For holding a hearing in connection with the application, as set forth under Section 17209.2, the actual costs experienced in each particular instance.

(e) (1) Each escrow agent shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner for the ensuing year, and of any deficit actually incurred or anticipated in the administration of this division in the year in which the assessment is made. Commencing with the assessment for fiscal year 2006–07, the assessment shall not increase by more than 25 percent over the amount assessed in the prior year. The pro rata share shall be the proportion which a licensee's gross income from escrow operations bears to the aggregate gross income from escrow operations of all licensees as compiled by the commissioner. The pro rata share shall not include the costs of any examinations provided for in Section 17405.1, unless they cannot be collected from the company examined. If the pro rata assessment collected pursuant to this paragraph exceeds the actual costs and expenses incurred in the administration of this division and any deficit incurred, the excess shall be credited to each escrow agent on a pro rata basis.

(2) On or before May 30 in each year, the commissioner shall notify each escrow agent by mail of the amount assessed and levied against it, and that the payment of any invoice for assessments of the commissioner is payable by the escrow agent in three installments with the first installment payable within 20 days after receipt of notification by the commissioner and the second and third installments payable within 20 days of August 31 and November 30, respectively, in each year. The first installment payment shall be 50 percent of the amount assessed, and the second and third installment payments shall each be 25 percent of the amount assessed.

(A) If the first installment payment is not made within 20 days, the commissioner may assess and collect a penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(B) If the second installment payment is not made within 20 days of August 31 in each year, the commissioner may assess and collect a



penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(C) If the third installment payment is not made within 20 days of November 30 in each year, the commissioner may assess and collect a penalty, in addition to the assessment, of 10 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

(3) In the levying and collection of the assessment, an escrow agent shall not be assessed for, nor be permitted to pay less than, three hundred fifty dollars (\$350) per year, per location.

(4) (A) If an escrow agent fails to pay the first assessment on or before the June 30 following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(B) If an escrow agent fails to pay the second installment payment on or before September 30 in each year, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(C) If an escrow agent fails to pay the third installment payment on or before December 31 in each year, the commissioner may by order summarily suspend or revoke the certificate issued to the company.

(D) If, after this order is made, a request for a hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a company shall not conduct business pursuant to this division, except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided in this division.

(f) Fifty dollars (\$50) for investigation services in connection with each application for qualification of any person under Section 17200.8, other than investigation services under subdivision (c) of this section.

(g) A fee not to exceed twenty-five dollars (\$25) for the filing of a notice or report required by rules adopted pursuant to subdivision (a) or Section 17203.1.

(h) This section shall become operative January 1, 2006.

SEC. 3. Section 17405 of the Financial Code is amended to read:

17405. (a) The business, accounts and records of every person performing as an escrow agent, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice. The provisions of this section shall not apply to persons specified in Section 17006.



(b) Any person subject to this division shall, upon request, exhibit and allow inspection and copying of any books and records by the commissioner or his or her authorized representative.

(c) (1) The commissioner shall conduct an examination of each licensed escrow agent as described in subdivision (a) as often as the commissioner deems necessary and appropriate, but not less than once every 48 months.

(2) The examination shall be conducted for the 12-month period immediately preceding the date that the examination is commenced unless the commissioner finds, based on information uncovered in the examination or in the most recent independent audit report, that the examination should be extended beyond the 12-month period.

(3) In determining how often an examination shall be conducted, the commissioner may consider each licensed escrow agent's compliance with the requirements set forth in this division and other factors the commissioner may by rule or order designate.

(4) This subdivision shall apply only to examinations commenced after the effective date established by the rule or order of the commissioner for the factors described in paragraph (3).

(d) Notwithstanding subdivision (c), the commissioner may conduct an indoctrination or preliminary examination, or both, under this section of any new licensee within one year of the issuance of the license under this division, and an examination described in subdivision (a) within two years of the issuance of the license under this division.

